United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

74-2698

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P/S

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

BUFFALO FORGE COMPANY

Plaintiff-Appellant

v.

UNITED STEELWORKERS OF AMERICA,AFL-CIO
I.W.ABEL as International President;
MITCHELL F. MAZUCA, Ind. & as District Director
JOHN GRUKA, Ind. & as International Representative
of United Steelworkers of America, AFL-CIO

LOCAL UNION NO. 1874 of the United
Steelworkers of America, AFL-CIO
VALENTINE F. ZIZZI, Ind. & As President; and
VALENTINE OLEJNICZAK, Ind. & as Vice President
of Local Union No. 1874 of the
United Steelworkers of America, AFL-CIO

LOCAL UNION NO. 3732 of the United
Steelworkers of America, AFL-CIO;
KERMIT HASELEY, Ind. & as President; and
ALFRED LIGAMMARI, Ind. & as Vice President
of Local Union No. 3732 of the
United Steelworkers of America, AFL-CIO

Defendants-Appellees

Appeal from a Decision and Order of the
United States District Court for the
Western District of New York
CIVIL No. 74-546

BRIEF FOR APPELLANT

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B R I E F

Preliminary Statement

This appeal is taken from a Decision and Order (App.3a) denying Appellant's application for a preliminary injunction, entered on December 13, 1974, by the United States District Court for the Western District of New York, (John T. Curtin, J.).[1/]

The Court has jurisdiction of this appeal pursuant to 28 U.S.C. 1292(a)(1).

1/ _____F.Supp _____, 88 LRRM 2063 (D.C.WNY 1974)

Statement of Issues Presented for Review

1. Whether the Arbitration Order and Injunction requested by the Company conflicted with Section 4 of the Norris-LaGuardia Act.

2. Whether the District Court had Authority under Boys Markets to Grant the Arbitration Order and Injunction requested by the Company.

Whether the Work Stoppage did Involve an underlying dispute which is Subject to Mandatory Arbitration under the Current Labor Agreement.

Statement of the Case

A. Nature of the Case and Proceedings Below

This is an action brought by the Buffalo Forge Company pursuant to §301 of the Labor Management Relations Act (29 USC §185), against the United Steelworkers of America ("International Union"), two affiliated local unions and various officers and agents of those labor organizations, for compensatory damages and other relief, including injunctive relief and an order directing arbitration, as a result of the unions' alleged breach of no strike clauses contained in an effective collective bargaining agreement to which all parties to this action are currently bound.

The proceedings below are specifically summarized in the Decision and Order of the District Court Judge (App.4a-5a). In its Decision and Order, the District Court denied the Company's application for a preliminary injunction, pending a determination of the dispute by an arbitrator to be appointed pursuant to the current collective bargaining agreement. This appeal followed.

B. Statement of Facts

The Company is engaged in the manufacture and sale of pumps and air handling equipment at three separate plants and office facilities in the Buffalo, New York area: 490 Broadway, Buffalo, New York; Duke Road, Cheektowaga, New York; and Oliver Street, North Tonawanda, New York.

For many years, the International Union and its affiliated locals 1874 and 3732 have represented the Company's production and maintenance employees under successive collective bargaining contracts. The current contract, by its terms, remains in full force and effect until September 28, 1975.

There are actually two production and maintenance bargaining units. One is represented by the International Union and Local 1874 and covers approximately 930 production and maintenance employees employed at the Company's Broadway and Duke Road plants. The other bargaining unit is represented by the International Union and Local 3732 and covers approximately 83 production and maintenance employeed employed at the Company's Oliver Street plant. (App.5a-6a).

The International Union and two other affiliated local unions (not parties to this action) represent the Company's office clerical and technical employees who are employed at the Company's Broadway, Duke Road and Oliver Street facilities. The Company, International Union, and the office-technical local unions (No. 8267 and No. 8269), for several months, have been negotiating the first collective bargaining agreement covering the Company's office clerical and technical employees. (App.6a).

On Saturday, November 16, 1974, the International Union and the office-technical local unions struck the Company and established picket lines at all of the Company's Buffalo area facilities. That strike and picket lines established by the International Union and the office-technical locals are

"bona fide, primary and legal". (App.2a Stipulation #4). This strike and the picketing are continuing to this date. (App.6a; 2a Stipulation #5).

On Monday, November 18, 1974, Local 3732 engaged in a one-day work stoppage at the Oliver Street plant, and the production and maintenance employees refused to cross the office-technical local's picket lines there (App.7a).

Late in the afternoon of November 20, 1974, Derrel Stewart, Vice President of the Company, learned that a work stoppage was planned for the following morning. He sent telegrams to officers of the local unions and the International Union setting forth the Company's position that a work stoppage would be in violation of the agreement, and offering to arbitrate any dispute involved.[2/] In addition, he called into his office, Mr. Marvin Pawlowski, an officer of the local, and read the telegram to him. (App.12a).

2/ See Exhibit C, attached to the Complaint in the Record on Appeal. The message read:

"There are confirmed reports that Local Number 1874 through it's [sic] stewards and other representatives is preparing to engage in a work stoppage which would be in violation of paragraph 14B of the agreement between the Steel Workers and the Buffalo Forge Company.

Please have the Local officers retract this plan immediately and advise all employees of their obligations under paragraph 14B through written and oral communications.

The Company is ready, willing and able to proceed to arbitration under the collective bargaining agreement in connection with any dispute which has caused this reported action. Your cooperation in this matter will be appreciated."

On the morning of November 21, at the admitted direction and instruction of the International Union[3/], Local 1874 and its members (production and maintenance employees) commenced a work stoppage at the Company's Broadway and Duke Road plants. (App.7a; 2a Stipulation #3).

Later the same morning, Local 3732 and its members walked off their jobs at the Oliver Street plant in North Tonawanda and refused to cross the picket lines established by the office-technical local unions (App.7a). Manufacturing operations at the Company's three plants were completely halted.

The work stoppage by the International and its two production and maintenance employee locals continued through Sunday, December 15, 1974. The production and maintenance employees returned to their jobs on Monday, December 16th, which was the next regular work day after the District Judge issued his Decision and Order herein. That work stoppage "may be resumed at any time in the near future at the direction of the International Union, or otherwise". (App.2a Stipulation #5).

There are currently, and at all times material herein, two separate but nearly identical labor agreements covering the different production and maintenance employee bargaining units. (App.2a Stipulation #2; Exhibits "A" and "B" attached to the

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3/ This direction was made at a meeting held with officers of local unions 1874 and 3732 on Wednesday, November 20, 1974, at about 11:30 a.m. (App.13a).

Complaint in the Record on Appeal). The agreements are between the Company and "United Steelworkers of America, AFL-CIO....on behalf of itself and members of" Local Union No. 1874 and Local Union No. 3732[4/]. The collective bargaining agreements are valid and apply to the dispute herein (App. 2a Stipulation #2).

The agreements between the Company and the defendant unions are signed by representatives of both the International and local unions[5/].

[4/] The preamble in Exhibit "A" attached to the Complaint reads:

> AGREEMENT
>
> Made this 9th day of January, 1973, between BUFFALO FORGE COMPANY and/or its successors or assigns, BUFFALO, NEW YORK (hereinafter referred to as the "Company") and UNITED STEELWORKERS OF AMERICA, AFL-CIO (hereinafter called the "Union") on behalf of itself and members of Local Union No. 1874, United Steelworkers of America, Buffalo Forge Company employees.
>
> ---

[5/] See, for example, the signature blocks in the contract booklet, Exhibit "A", as follows:

> "Dated at Buffalo, New York, this 9th day of January, 1973.
>
> BUFFALO FORGE COMPANY
> Milton A. Bender
>
> UNITED STEELWORKERS OF AMERICA-AFL-CIO
> I.W.Abel
> Walter J. Burke
> Joseph P. Malony
> Mitchel F. Mazuca
> Robert A. Klinshaw
>
> COMMITTEE: LOCAL NO. 1874
> Stanley Grey
> Valentine F. Zizzi
> Aloysius B. Mazur
> Michael J. Donofrio
> Leon G. Urbaniak
> Val Olejniczak
> Robert W. Laskowski
> Dominic S. Palmeri
> Eugene L. Gawron"

Both agreements provide a mandatory six-step dispute settlement procedure ending in binding arbitration.[6/]

6/ See, for example, paragraphs 26 through 32 (Exhibit "A"); the first and last paragraphs read:

> 26. Should differences arise between the Company and any employee covered by this Agreement as to the meaning and application of the provisions of this agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences immediately in the following manner:
>
> . . . . .
>
> 32. Sixth. In the event the grievance involves a question as to the meaning and application of the provisions of this Agreement, and has not been previously satisfactorily adjusted, it may be submitted to arbitration upon written notice of the Union or the Company. Such notice shall be served upon the other party within five (5) working days after receipt of the answer in the Fifth (5th) Step. The party requesting arbitration shall apply to the Federal Mediation and Conciliation Service for an arbitrator, who shall be jointly selected by the parties. The arbitrator shall not have the power to add to, to disregard or modify any of the terms and conditions of this Agreement. The decision of the arbitrator shall be binding upon the parties. The expenses of arbitration and the compensation for services rendered by the arbitrator shall be shared equally by the parties.

The "No strike" clause in both agreements (paragraph 14 b.) is incorporated in a section entitled "Responsibilities of the Parties"[7/].

7/

Section III
Responsibilities of the Parties

11. Each of the parties hereto acknowledges the rights and responsibilities of the other party and agrees to discharge its responsibilities under this Agreement;

12. The Union (its Officers and representatives at all levels) and all employees are bound to observe the provisions of this Agreement.

13. The Company (and its Officers and representatives at all levels) is bound to observe the provisions of this Agreement.

14. In addition to the responsibilities that may be provided elsewhere in this Agreement, the following shall be observed:

a. The Union and its members will not solicit membership on Company time.

b. There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union Officers or Union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such conduct and shall not result in any disciplinary actions against the Officers, committeemen or stewards involved. [Emphasis added]

c. There shall be no discrimination, restraint or coercion against any employee based on consideration of race, creed, color, sex, age, national origin or membership in the Union.

d. There shall be no lockout.

Both agreements contain a "management clause"[8/], and the following clause pertaining to instructions to report for work:

> 22.(a) Any employee who works on a regular work day at his regular work is deemed to be instructed to report for work on the next succeeding scheduled work day unless the Company notifies the employee not to report for work, with notice also to the Union. [Emphasis added]

Finally, although the Company formerly claimed that a dispute over truck driving assignments to production and maintenance employees during the office-technical employee strike was at least a partial cause of the work stoppage, the District Court found to the contrary and appellant does not seek to disturb that finding on this Appeal (App.8a-13a).

8/

> Section IV
> Management
>
> 43. Subject to the provisions of this Agreement, the management of the plant and the direction of working forces including the right to hire, suspend or discharge for proper cause, transfer and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company.

Argument

1. THE ARBITRATION ORDER AND INJUNCTION REQUESTED BY THE COMPANY DO NOT CONFLICT WITH SECTION 4 OF THE NORRIS-LaGUARDIA ACT.

Congress passed the Norris-LaGuardia Act in 1932, as a reaction to the wide-spread misuse by Federal courts of injunctions in certain labor-management controversies.[9/] Section 4 of the Act (29 USC §104) prohibited Federal courts from issuing injunctions in "labor disputes" and provided strict procedural safeguards in those cases wherein injunctions were appropriate. (29 USC §§107-112)[10/]

The wording of the Act itself reveals that the core purpose of the Statute was to eliminate jurisdiction of the Federal courts over lawful strikes in labor disputes. Injunctions are still appropriate when "unlawful acts have been threatened....or have been committed...."[11/] Even Representative LaGuardia observed:

9/ Significantly, Appellees have not, and cannot articulate any such abuses which would result from granting the Appellant the relief sought here.

10/ Emery Air Freight Corp. v. Local 295 Teamsters, 449 F. 2d 586 (2d Cir.1971), Cert Den. 405 U.S. 1006

11/ 29 USC §107(a)

> "Gentlemen, this bill does not--and I cannot repeat it too many times--this bill does not prevent the court from restraining any unlawful act. This bill does prevent the Federal court from being used as an agency for strike-breaking purposes and as an employment agent for scabs to break a lawful strike. That is what this bill does. 75 Cong.Rec.5478-79 (1932) [Emphasis added]

By 1947, as evidenced by the passage of the Labor Management Relations Act, a federal policy had emerged "to encourage settlement of labor disputes through enforcement of compulsory arbitration agreements". Avco Corp. v Local 787, 459 F. 2d 968, 970 (3d Cir.1972)

Section 203(d) of that Act (29 USC §173(d)) provided that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement".

Section 301(a) of that Act (29 USC §185(a)) granted Federal courts jurisdiction over "suits for violation of contracts between an employer and a labor organization". Section 301 has been interpreted as a grant of jurisdiction to Federal courts to order specific performance to enforce arbitration provisions in labor agreements. Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957); ITT, Inc. v. Communications Workers, 422 F. 2d 77 (2d Cir. 1970).

In the twenty-seven years since these statutes were enacted, the Supreme Court has formulated an expansive body of federal labor relations law, grounded upon the basic statutory premise that industrial stability is best fostered by the substitution of arbitration for strikes. The Supreme Court has acknowledged that:

> "Complete effectuation of the federal policy is achieved when the agreement contains both an arbitration provision for all unresolved grievances and an absolute prohibition of strikes, the arbitration agreement being the 'quid pro quo' for the agreement not to strike."12/

It is now well settled that if a labor agreement contains a broad no-strike clause, a claimed breach and the scope of the prohibition are proper subjects for arbitration. Drake Bakeries, Inc. v. Local 50, American Bakery and Confectionary Workers, 370 U.S. 254 (1962); H.K.Porter Co., Inc. v. Local 37, United Steelworkers of America, 400 F 2d 691 (4th Cir.1968); Local 174 Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962); Inland Steel Co. v. Local 1545 UMWA, 505 F 2d 293 (7th Cir. 1974). This Court, in Monroe Sandler Corp.

12/ United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U.S. 574, 578, Fn. 4 (1960)

v. Livingston, 377 F. 2d 6,9-10 (2d Cir.1967), Cert.Den.389 U.S. 831 (1967):

> "The rule is that unless the parties expressly exclude a matter, the Court will conclude that they intended to submit it to arbitration."

The development of a complete federal law of labor relations, with mutuality and equality of enforceability of the provisions of labor agreements, was seriously hampered by the decision in Sinclair Refining Company v. Atkinson, 370 U.S. 195 (1962). Despite clear indications in the Lincoln Mills decision that the court there had in mind the necessity of an effective method of assuring freedom from economic warfare during the term of the contract; despite a clear statement that Section 301 expressed a federal policy that federal courts should enforce labor agreements so as to obtain industrial peace; and finally, despite the holding in Lincoln Mills that jurisdiction to compel arbitration of disputes was not restricted or impeded by Section 7 of Norris-LaGuardia, the court in Sinclair held that the action involved a "labor dispute" within the meaning of the Norris-LaGuardia Act, and that inasmuch as Congress, in enacting Section 301, had not repealed Norris-LaGuardia, the federal courts were prohibited from enjoining strikes in breach of contract.

In Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970), the Supreme Court expressly overruled the Sinclair majority's literal interpretation of Norris-LaGuardia. The Court held that a federal court has jurisdiction under Section 301 of the Labor Management Relations Act to enjoin a work stoppage involving an arbitrable grievance, notwithstanding Section 104 of the Norris-LaGuardia Act.[13/]

The decision breathed new life and vitality into the dominant congressional theme. In sum, the Court decided that equitable validation of union no-strike pledges would do no violence to the root purpose of the Norris-LaGuardia Act, which was to prevent injunctive interference with union efforts to obtain recognition and contracts, rather than to insulate unions from their duty to live up to their obligations under contracts once obtained.

13/ Thus, a complete federal policy was meaningfully expressed as requiring that collective bargaining contracts were equally binding and enforceable on both parties; and that federal courts should enforce these agreements on behalf of or against labor organizations to secure industrial peace.

As the Supreme Court observed eight years earlier, in Dowd Box Co. v. Courtney, 368 U.S. 502,509 (1962):

> "The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301(a) reflects congressional recognition of the vital importance of assuring the enforceability of such agreements".

"Freedom of contract" is still a very important principle of our labor policy. Standard Food Products Corp. v. Brandenburg, 436 F. 2d 964 (2d Cir. 1970). The Court's decision there concerned a direct and primary strike action of the union against the employer party to the labor agreement, not a sympathy strike. The union had contractually reserved its right to strike over the dispute involved there. This Court observed: "Where the union has not given up the right to strike, the Norris-LaGuardia Act prohibits the issuance of an injunction". (436 F 2d at 965). The decision concluded:

> "The parties have agreed that such a controversy is to be left to the arbitrament of economic weapons. The Court has no power to disregard their contract and force other methods upon them." [Emphasis added]

In Boys Markets, the Supreme Court pointed out that its injunction order "merely enforces the obligation that the union freely undertook...." (398 U.S. at 252). Yet, it is also settled law that a union man's statutory right to refuse to cross another union's lawful picket line is protected activity. That right may be waived, and is waived, by the action of the union in agreeing to a no strike clause in a labor agreement. N.L.R.B. v. Rockaway News Supply Co., 345 U.S. 71,80 (1953)[14]; Monongahela Power Co. v. IBEW, 484 F. 2d 1209, 1214 (4th Cir. 1973), 87 LRRM 2481,2485; Armco Steel Corp. v. UMWA, 505 F. 2d 1129 (4th Cir.1974).

Employees, then, do not have such a federally protected right in the face of a broad, unequivocal no-strike provision in the collective bargaining contract. Monongahela Power Co. v. IBEW, supra; Armco Steel Corp. v. UMWA, supra. Thus, injunctive relief herein would have worked no injustice and certainly would not have constituted any abuse of judicial discretion that the Norris-LaGuardia sought to eliminate.

14/ Significantly, the no-strike clause in Rockaway News, as here, made no specific reference to whether a refusal by employees to cross a picket line was prohibited; but, the Court held such activity was an unprotected violation of the no-strike clause.

In this regard, it is especially significant that the Company's production and maintenance employees, whom the International Union ordered to engage in a work stoppage, did not engage in any picketing (App.13a), and the Company has not asked for a court order to ban any picketing by its office-technical employees. Moreover, the work stoppage involved herein would not have occurred on November 21, and did not in fact occur, except for the orders and directions initiated, on November 20, by the International Union, one of the signatories to the applicable labor agreements. The Company's prayer for equitable relief in the Complaint sought only a complete revocation of the instructions which had caused the work stoppage.[15/]

This is not the first occasion where a Federal Court has decided that a union's direction to members to honor a picket line presented an arbitrable issue, and that injunctive relief was proper. Northeast Airlines, Inc. v. Air Line Pilots

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15/ The direction of the Union officials who caused the work stoppage here closely resembles the conduct of the union officials in Boys Markets. (Described in the District Court's findings of fact; 70 LRRM 3071,3074). In Amstar Corporation v. Amalgamated Meatcutters and Butcher Workmen, 468 F 2d 1371 (5th Cir.1972), cited by the District Judge as controlling, the union defendant did not direct its members to engage in a work stoppage or to honor the stranger union's picket line.

Ass'n. Int'l, 325 F. Supp. 994 (D.Minn.1970), Rev'd. 442 F. 2d 246, aff'd. on reh. 442 F. 2d 251 (8th Cir.), Cert.Den. ___U.S. ___ (1971). There an airline sought to enjoin its pilots from honoring a picket line established by another union. The carrier contended that the refusal of its pilots to cross this picket line constituted a violation of an implied no-strike clause and was therefore a "minor dispute" which was to be resolved pursuant to the arbitration procedures set forth in the Railway Labor Act.[16/] The District Court denied injunctive relief and an order to arbitrate, largely on the same basis as the union's position in the instant case. It held, 325 F Supp. at 997:

> "The 'Minor Dispute' provision of the Railway Labor Act manifestly presumes the existence of some underlying disagreement which has to be resolved and sets forth procedures for doing so without resort to a strike.

16/ The definition of a "minor dispute" under the Railway Labor Act is virtually identical to the definition of an arbitrable grievance under the collective bargaining contract here. Minor disputes are defined as: "grievances or other differences arising out of the application or inerpretation of an existing collective bargaining agreement..."

> "The situation before this Court, however, does not present an underlying dispute between ALPA and NWA over which ALPA in an attempt to achieve a favorable resolution has initiated a work stoppage. The situation presented involves the work stoppage itself as the very basis of the disagreement."

The Eighth Circuit reversed, ordered arbitration and enjoined the work stoppage. The Court held, 442 F. 2d at 248:

> "....[W]e feel that NWA is correct in arguing that the ALPA contract can arguably be interpreted to prohibit the Association from instructing its members to respect the BRAC picket Lines. The dispute is, thus, in our view, a minor one which must be submitted to the System Board of Adjustment." [Emphasis added]

The fact that this decision arose under the Railway Labor Act does not impair its applicability to the present case. The Supreme Court in Boys Markets turned to its earlier decision in Brotherhood of Railway Trainmen v. Chicago River and Indiana Railroad Co., 353 U.S. 30 (1957), as direct support for its holding that the issuance of an injunction in cases such as this does not offend the policies of the Norris-LaGuardia Act. The Court stated, 398 U.S. at 252:

"The principles elaborated in Chicago River are equally applicable to the present case. To be sure, Chicago River involved arbitration procedures established by statute. However, we have frequently noted, in such cases as Lincoln Mills, the Steelworkers Trilogy and Lucas Flour, the importance that Congress has attached generally to the voluntary settlement of labor disputes, without resort to self-help and more particularly to arbitration as a means to this end. Indeed, it has been stated that Lincoln Mills, in its exposition of §301(a), 'went a long way towards making arbitration the central institution in the administration of collective bargaining contracts'."

2. THE DISTRICT COURT HAD AUTHORITY UNDER BOYS MARKETS TO GRANT THE ARBITRATION ORDER AND THE INJUNCTION REQUESTED BY THE COMPANY

THE WORK STOPPAGE DID INVOLVE AN UNDERLYING DISPUTE WHICH IS SUBJECT TO MANDATORY ARBITRATION UNDER THE CURRENT LABOR AGREEMENT.

The applicable labor agreements in this case clearly spell out a broad, unequivocal prohibition which the unions violated.[7/] Section 26 contains an explicit prohibition of work stoppages concerning contractual grievances. Section 14 b., a section containing no explicit references to any other term of the agreement and no words of limitation or

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17/ Compare Monongahela Power Co. v. IBEW, supra; Barnard College v. Transport Workers Union, 372 F. Supp. 211 (S.D. NY 1974); NAPA Pittsburgh,Inc. v. Automotive Chauffeurs Local 926 __ F. 2d __, (3d Cir.1974), 87 LRRM 2044, Cert. Den. __ U.S. __ (12/9/74), 87 LRRM 3035; Wilmington Shipping Co. v. International Longshoremen's Association, __ F. 2d __ (4th Cir. 1974), 86 LRRM 2846, Cert.Den. __ U.S. __ (11/18/74), 87 LRRM 2716; Pilot Freight Carriers, Inc. v. Local 391 Teamsters, 497 F. 2d 311 (4th Cir.1974), Cert.Den.__ U.S. __ (10/15/74), 87 LRRM 2339. See also United Steelworkers of America v. CCI Corporation, 395 F. 2d 529 (10th Cir. 1968).

exception[18/], prohibits all strikes, work stoppages, interruptions and impeding of work during the term of the agreement; and prohibits authorization, instigation, aid or condonation of "any such activities" by officers or representatives of the International and local unions. The only express contractual exception to those prohibitions are "unsuccessful efforts" by union agents to prevent and terminate wildcat strikes. (see page 9, above).

The union's unlawful conduct under the labor agreements here, gives rise to an underlying, arbitrable dispute even if these agreements did not contain any no-strike clauses. U.S.Steel Corp. v. UMWA, 505 F. 2d 1129 (4th Cir.1974); Inland Steel Company v. UMWA,supra; Island Creek Coal Company v. UMWA, __ F. 2d __ (Jan.1975), 88 LRRM 2364. Section 43 of the labor agreement recognizes the exclusive right of the Company to relieve employees from duty; Section 22(a) confirms that employees are deemed to be instructed to report for work unless the Company notifies employees not to report. The Court below found that it was the union's direction to employees not to report for work and not to cross the office-technical picket line which caused the production and maintenance employee work

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18/ Compare Standard Food Products Corp. v. Brandenburg, supra.

stoppage to occur. Thus, the District Court certainly had jurisdiction to order arbitration of this dispute and grant injunctive relief pending the arbitral determination.

The Fourth Circuit, in its recent Pilot Freight decision[19], enjoined a sympathy work stoppage. The contract there permitted employees to respect a stranger union's primary picket line, but the union, itself, had ordered employees not to cross the picket lines. The issue of the union's right to order employees to engage in a work stoppage raised an underlying arbitrable issue pertaining to the scope of the no-strike clause. The Court determined that the parties had intended to submit contractual disputes of this kind to arbitration.

The District Judge here held that:

> "Although the cases of Monongahela Power Co. v. Local No. 2332 IBEW, 484 F 2d 1209 (4th Cir. 1973), and Barnard College v. Transport Workers, 372 F.Supp.211(S.D. NY 1974), dealt with agreements which contained no additional language and appear to support plaintiff's position, nevertheless, the court finds that the cases cited by the defendants are controlling. Amstar,supra;Simplex Wire and Cable Co. v. Local 2208 of the International Brotherhood of Electrical Workers,314 F.Supp. 885 (D.C. NH 1970); General Cable Corp. v. International Brotherhood of Electrical Workers, 331 F. Supp.478 (D.C. Md.1971)."[20]

19/ Pilot Freight Carriers, Inc. v. Local 391 Teamsters,497 F. 2d 311 (4th Cir.1974) Cert.Den.__ U.S. __ (10/15/74),87 LRRM 2339.

20/ The Fourth Circuit 1973 decision in Monongahela effectively overruled the Maryland District Court decision in General Cable.

Thus, the District Court adopted the narrow, literal reading of the Boys Markets holding of the Fifth Circuit in Amstar. Although the facts with which the Amstar court dealt closely resemble the circumstances here, there are significant differences. In Amstar, Meatcutter Union officials did not direct or order employees to engage in a work stoppage and honor the picket line; the employees represented by the striking Longshoremen's Union were not employed by Amstar at the same facility where the Meatcutters members were employed; and the no-strike pledge in the Meatcutters labor agreement was expressly tied to the contractual grievance procedure.

As of this date, the Third, Fourth and Seventh Circuits have recently enjoined sympathy work stoppages and ordered arbitration of the dispute concerning the scope of the union's and employees' explicit or imputed no-strike pledge.

This case, however, is not the first sympathy strike in violation of a no-strike clause, in which the Steelworkers International Union has been involved. In United Steelworkers of America v. CCI Corporation, 395 F. 2d 529 (10th Cir.1968), the court found that the union's refusal to cross the Teamster picket lines "was clearly a breach of contract". (395 F. 2d at 533).

In the light of these decisions, it appears that the final determination of the scope of the Union's commitments under the current labor agreements was one the unions could not make unilaterally. The contracts here expressly reserve that determination to an arbitrator. As we perceive it, the unions were not entitled to make their own determination of their contractual rights, free from those contractual restraints which affected the normal relations between the unions and the Company. The fact that the office-technical picket lines were established by the International Union, in no way lessens its obligation to pursue arbitration, rather than self-help.

Conclusion

For the reasons stated, it is respectfully submitted that the Decision and Order of the District Court should be reversed and remanded with instructions to: (a) order arbitration, in accord with the terms of the labor agreements, of the dispute whether defendants conduct violated the terms of said agreements; and (b) issue the injunction contained in the prayer for relief in the Complaint.

Respectfully submitted,

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